

**MARTINSBURG BOARD OF ZONING APPEALS**  
**August 1, 2017 6:30pm**  
**232 N. Queen Street**  
**J. Oakley Seibert Council Chambers**  
**Regular Meeting Minutes**

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With a quorum present, Vice-Chairperson Casabona called the regular scheduled meeting of the City of Martinsburg Board of Zoning Appeals to order at 6:30 p.m. The following Boardmembers were present: Brenda Casabona, Martin Bales, Doreane Mosser and Tom Johnson. Absent were: Shelly Schoppert and Mary Dulyea. Also in attendance were City Engineer/Planning Director Kim Petrucci, City Planner Tracy Sherman, Legal Counsel Kin Sayre and Planning Secretary Holly Hartman.

**APPROVAL OF June 6, 2017 MEETING MINUTES**

Boardmember Bales made the motion to approve the June 6, 2017 minutes. The minutes were approved by unanimous consent.

**OLD BUSINESS**

None

**UNFINISHED BUSINESS**

None

**NEW BUSINESS**

1. **CASE # SE 17-045. 131 N. Queen Street. Public Hearing.** Application requesting a Special Exception pursuant to Martinsburg Zoning Ordinance 7-0-78 Section 523.2 to regulate the sale of alcoholic beverages for the purposes of on-site consumption. The Hub Co-op, LLC., appellant.

After being sworn in by Legal Counsel, Andrew Johnson, 604 South Hills Drive, Shepherdstown, stated that he is requesting permission to open his restaurant and wine bar and to apply for his alcohol license through the ABC.

Vice-Chairperson Casabona asked if it would be two separate businesses or the same one. Mr. Johnson replied that it is one single business, with the addresses of 131-133 N. Queen Street, with the entrance at 131 N. Queen Street. Vice-Chairperson Casabona asked for the hours of operation. Mr. Johnson responded that the requested hours are from 6:00 a.m. to 10:00 p.m. with the idea of serving breakfast at a later point but for now only serving lunch and dinner. The restaurant will be open six days a week.

City Planner Tracy Sherman asked if both 131 and 133 N. Queen Street were on the same tax map and parcel. Mr. Johnson replied that he was not sure of that answer, but they applied with the address of 131 because the entrance to the building is at that address. Legal Counsel Kin Sayre stated that based on the legal ad and the information from the applicant advising that the actual business address is at 131, he believes we have substantially complied with the legal notification requirements. Mr. Johnson added that to comply with the ABC requirements, 131 is the restaurant address for on premise sales and 133 is the wine store address for off premise sales.

Boardmember Bales made the motion to accept legal counsels recommendation that the legal advertisement was properly done. Boardmember Mosser seconded the motion. The motion was approved by unanimous consent.

Ms. Sherman provided a staff report stating that the request falls under ordinance 7-0-78, article 5, and section 702.3.

Vice-Chairperson Casabona opened the Public Hearing at 6:37 p.m. As no one came forward to speak for or against the request, the public hearing was closed at 6:37 p.m.

Vice-Chairperson Casabona read aloud for discussion the special conditions for the Special Exception in the Martinsburg Zoning Ordinance (MZO) section of 702.31: The proposed use is in harmony with the purpose and intent of the Martinsburg Comprehensive Development Plan and of this zoning ordinance. There was general agreement for no concern.

Vice-Chairperson Casabona read aloud for discussion the special conditions for the Special Exception in the Martinsburg Zoning Ordinance (MZO) section of 702.32: The location and size of the use, the nature and intensity of the operations involved in or conducted in connection with it, the size of the site in relation to it, and the location of the site with respect to streets giving access to it, are such that it will be in harmony with the appropriate and orderly development of the district in which it is located. There was general agreement for no concern.

Vice-Chairperson Casabona read aloud for discussion the special conditions for the Special Exception in the Martinsburg Zoning Ordinance (MZO) section of 702.33: The location, nature and height of buildings, walls, and fences, and the nature and extent of the landscaping on the site are such that the use will not hinder or discourage the appropriate development and use of adjacent land and buildings. There was general agreement for no concern.

Vice-Chairperson Casabona read aloud for discussion the special conditions for the Special Exception in the Martinsburg Zoning Ordinance (MZO) section of 702.34: Operations in connection with any special use will not be more objectionable to nearby properties by reason of noise, fumes, vibration, or other characteristics, than would be the operations of any permitted use not requiring a special permit. There was general agreement for no concern.

Vice-Chairperson Casabona read aloud for discussion the special conditions for the Special Exception in the Martinsburg Zoning Ordinance (MZO) section of 702.35: Parking areas will be of adequate size for the particular use, properly located and suitable screened from adjoining residential uses, and the entrance and exit drives shall be laid out so as to achieve maximum safety. This condition is not applicable.

Vice-Chairperson Casabona read aloud for discussion the special conditions for the Special Exception in the Martinsburg Zoning Ordinance (MZO) section of 702.36: Public utility service (electricity, sewerage, storm drainage and water) will be adequate to service the proposed use and will have suitable access thereto, and the proposal will not overburden existing facilities; or, any onsite water supply, sewage treatment, or storm drainage disposal system will be adequate to service the proposed use. There was general agreement for no concern.

Ms. Sherman suggested to Mr. Johnson that he request the full range of hours he may want for the business as he can reduce the hours without approval, but would have to come back before the board to increase the business hours. Mr. Johnson responded that he would like to request the ABC's state allowed hours of operation which are from 7:00 a.m. until 2:00 a.m. The Board agreed they are in concurrence with the amended hours of operation.

All Boardmembers agreed the application has met the requirements for the Special Exception.

Boardmember Bales made the motion to approve the application requesting a Special Exception pursuant to Martinsburg Zoning Ordinance 7-0-78 Section 523.2 to regulate the sale of alcoholic beverages for the purposes of on-site consumption. The Hub Co-op, LLC., appellant; with the addition that the applicant can be brought back before the board if it is deemed a nuisance. The motion was seconded by Boardmember Johnson and followed by a unanimous roll call vote of "aye". Motion approved.

2. **Project # SE 17-00001. 120-126 Eagle School Road. Public Hearing.** Application requesting a Special Exception in accordance with Section 560 "Table of Zoning District Uses" to use portion of structure as a Family Childcare Facility. Learning Bees, LLC, appellant.

After being sworn in by Legal Counsel, Joyce Nyan, 65 Sopwith Way, Martinsburg, stated that she is proposing a faith based childcare facility. She currently has a facility in Berkeley County and would like to expand her business into the City of Martinsburg.

Vice-Chairperson Casabona asked if Ms. Nyan has been through the state approvals as well as local requirements. Ms. Sherman stated that the final improvements would be completed once BZA approval is received so the applicant did not sink money into a project that may not be approved. Ms. Sherman added that all necessary inspectors have done a walk-thru of the facility.

Boardmember Bales asked what type of fencing would be installed around the play area. Ms. Nyan responded that it would be either a four or six foot chain link fence.

Vice-Chairperson Casabona opened the Public Hearing at 6:48 p.m.

- Charlene Belle spoke in favor of the request. Ms. Belle stated that her daughter has attended Learning Bees since February 2017. She was apprehensive leaving her daughter at a facility, but that her daughter has excelled and is doing very well.

Ms. Sherman added that she has seven letters of support from the public. Ms. Smith read the names for the record: Jackie Smith, Lillian Velez, Angela Andrade, Kelsey Shelton, Brooke Everhart, Tabitha Ryan and Kayla Welch.

As no one else came forward to speak for or against the request, the public hearing was closed at 6:50 p.m.

Vice-Chairperson Casabona read aloud for discussion the special conditions for the Special Exception in the Martinsburg Zoning Ordinance (MZO) section of 702.31: The proposed use is in harmony with the purpose and intent of the Martinsburg Comprehensive Development Plan and of this zoning ordinance. There was general agreement for no concern.

Vice-Chairperson Casabona read aloud for discussion the special conditions for the Special Exception in the Martinsburg Zoning Ordinance (MZO) section of 702.32: The location and size of the use, the nature and intensity of the operations involved in or conducted in connection with it, the size of the site in relation to it, and the location of the site with respect to streets giving access to it, are such that it will be in harmony with the appropriate and orderly development of the district in which it is located. There was general agreement for no concern.

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Vice-Chairperson Casabona read aloud for discussion the special conditions for the Special Exception in the Martinsburg Zoning Ordinance (MZO) section of 702.35: Parking areas will be of adequate size for the particular use, properly located and suitable screened from adjoining residential uses, and the entrance and exit drives shall be laid out so as to achieve maximum safety. There was general agreement for no concern.

Vice-Chairperson Casabona read aloud for discussion the special conditions for the Special Exception in the Martinsburg Zoning Ordinance (MZO) section of 702.36: Public utility service

(electricity, sewerage, storm drainage and water) will be adequate to service the proposed use and will have suitable access thereto, and the proposal will not overburden existing facilities; or, any onsite water supply, sewage treatment, or storm drainage disposal system will be adequate to service the proposed use. There was general agreement for no concern.

All Boardmembers agreed the application has met the requirements for the Special Exception.

Boardmember Mosser made the motion to approve the application requesting a Special Exception in accordance with Section 560 "Table of Zoning District Uses" to use portion of structure as a Family Childcare Facility. Learning Bees, LLC, appellant. The motion was seconded by Boardmember Johnson and followed by a unanimous roll call vote of "aye". Motion approved.

#### **DISCUSSION/ACTION ITEMS**

None

#### **OTHER BUSINESS**

None

#### **ADJOURNMENT**

The meeting was adjourned at 6:54 p.m.

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Brenda Casabona, Vice-Chairperson

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Holly Hartman, Planning Secretary